

The record considered by the Appeals Board consists of the transcript for hearing held January 20, 1998, with attachments, and the transcript for regular hearing held April 3,

1995, and the file maintained by the Division of Workers Compensation in the above matter.

Stipulations

Respondent originally raised an issue regarding the Order for medical mileage. At Oral Argument before the Appeals Board, the parties stipulated that this issue was being withdrawn.

ISSUES

Did the Administrative Law Judge err in ordering respondent to pay past medical expenses incurred by claimant with her family physician prior to regular hearing when at the time of regular hearing the issues regarding outstanding medical compensation and unauthorized medical compensation were not raised?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented, the Appeals Board makes the following findings of fact and conclusions of law:

Claimant suffered personal injury by accident arising out of and in the course of her employment with respondent during the period May 17, 1993, through August 4, 1994. This matter originally went to regular hearing before Judge Barnes on April 3, 1995. At that time, the parties placed into the record the stipulations and the issues that were in contention. There was no mention made by the claimant or claimant's attorney at the regular hearing regarding any dispute over unpaid medical expenses with claimant's family doctor at the Andover Medical Clinic.

This matter was decided by assigned Special Administrative Law Judge David A. Shufelt in an Award dated December 1, 1995. At that time, claimant was awarded a 33 percent work disability for a total award in excess of \$31,000. The Appeals Board affirmed.

In its unpublished decision of August 8, 1997, the Kansas Court of Appeals reversed the Award, finding K.S.A. 44-501(c), as interpreted by Boucher¹ to be applicable to this situation and denying claimant any award in excess of her medical expenses.

¹ Boucher v. Peerless Products, Inc., 21 Kan. App. 2d 977, 911 P.2d 198, *rev. denied* 260 Kan. 991 (1996).

On November 21, 1997, claimant filed a Demand for Compensation, pursuant to K.S.A. 44-512a, requesting payment of medical bills owed to Andover Medical Clinic in the amount of \$339.95 and medical mileage totaling 1,460 miles at \$.28 per mile totaling \$408.80. The matter went to hearing on January 20, 1998, and resulted in the Order from which this appeal has been taken. The medical mileage issue has been resolved between the parties. Therefore, the only issue remaining for Board consideration concerns the medical expenses with the Andover Medical Clinic.

The Administrative Law Judge's Order of January 23, 1998, states "[c]laimant is entitled to payment for all of her medical expenses as a result of the injury sustained on August 4, 1994." The Order is not clear as to whether the additional expenses associated with the Andover Medical Clinic are included, but for purposes of this Order the Appeals Board will assume those medical bills were ordered paid by the Administrative Law Judge.

K.S.A. 44-510(c)(2) states as follows:

Without application or approval, an employee may consult a health care provider of the employee's choice for the purpose of examination, diagnosis or treatment, but the employer shall only be liable for fees and charges of such health care provider up to a total amount of \$500. The amount allowed for such examination, diagnosis or treatment shall not be used to obtain a functional impairment rating. Any medical opinion obtained in violation of this prohibition shall not be admissible in any claim proceedings under the workers compensation act.

In this instance, claimant did not request unauthorized medical treatment for the examination and report of Dr. Ernest Schlachter, as Dr. Schlachter had provided a rating, and such a request would violate the provisions of K.S.A. 44-510(c)(2). Therefore, the unauthorized medical allowance of \$500 granted to claimant by statute has not been utilized. The Appeals Board finds that the treatment provided by the Andover Medical Clinic was unauthorized medical care. As claimant is entitled to the use of the unauthorized medical benefits for the purpose of examination, diagnosis or treatment associated with the injury, and as those funds have not been utilized, the Appeals Board finds it appropriate that the payment of the \$339.95 to the Andover Medical Clinic be ordered as unauthorized medical treatment.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Nelsonna Potts Barnes dated January 23, 1998, should be, and is hereby, affirmed, and claimant is awarded payment of the medical expenses from the Andover Medical Clinic in the amount of \$339.95 as unauthorized medical expenses.

IT IS SO ORDERED.

Dated this ____ day of October 1998.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

DISSENT

The undersigned respectfully dissent from the opinion of the majority in the above matter.

At the time of the regular hearing in this matter, pre-trial stipulations were taken. There was no indication from claimant's counsel that any additional medical benefits were being claimed as due and owing. Claimant further acknowledged unauthorized medical was not at issue before the Administrative Law Judge. K.A.R. 51-3-8 requires notice of any claim for any medical or hospital expenses for which reimbursement is being claimed. In addition, K.A.R. 51-3-5 requires a submission letter by each party to the Administrative Law Judge within the time limits set which is to contain an itemization of all medical expenses at issue. Claimant's submission letter provided no indication of a dispute concerning the medical treatment provided or the medical bills paid by respondent which, at the time of regular hearing, exceeded \$10,000. The disputed Andover Medical Clinic bill was not presented at the regular hearing, it was not requested that claimant be awarded all authorized medical treatment through the date of the award, and claimant's attorney acknowledged that unauthorized medical was not at issue. The first time the Andover medical bill was presented as a disputed bill was with the 1997 demand for payment filed by claimant.

The Kansas Administrative Regulations are specific regarding what information is to be provided at the time of regular hearing and at the time of the submission of the case. The parties are obligated to specify what issues are in contention and in particular what, if any, hospital or medical expenses are being claimed. K.A.R. 51-3-8 does allow for the

withdrawal of stipulations if the Administrative Law Judge considers it appropriate, depending upon the circumstances in each instance. In this case, no request for the withdrawal of the stipulations was ever filed by claimant.

Claimant is bound by the stipulations entered into at the regular hearing. The evidence regarding the additional medical expenses, neither raised nor offered at the time of regular hearing, and claimant's entitlement to payment for those medical expenses were not properly before the Administrative Law Judge at any time.

There is no evidence that respondent was aware of the medical bills now in question. To grant claimant unauthorized medical payments under K.S.A. 44-510(c)(2) under these circumstances violates K.A.R. 51-3-8 and K.A.R. 51-3-5.

The Appeals Board has held on many occasions that the parties are bound by their stipulations unless the administrative law judge allows a withdrawal of the stipulations. In this instance, as there was no request that the stipulation regarding the payment of authorized and unauthorized medical treatment ever be modified, changed or withdrawn, the undersigned would bind claimant to the stipulations, and deny payment of these past medical expenses in the amount of \$339.95.

BOARD MEMBER

BOARD MEMBER

c: Timothy J. King, Wichita, KS
Orvel Mason, Arkansas City, KS
Nelsonna Potts Barnes, Administrative Law Judge
Philip S. Harness, Director